

《Keynote Speech》

**The Basic Principles of the Convention for
Safeguarding of Intangible Heritage: A Comparative
Analysis with The Convention for Protection of World
Natural and Cultural Heritage and Japanese Law**

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1. Introduction

You may know the Yellowstone National Park, which was designated as National Park for the first time in the world in 1872. In 1965, the Committee on Natural Resources of the White House Conference on International Co-operation started to discuss the possibility of setting up a fund for World Heritage. And in 1972 President Nixon proposed to make a Convention until 1972, since the year 1972 was the centennial anniversary of the National Park system in the USA. UNESCO put this movement and its own initiative to draft a convention on the occasion to safeguard the temple of Abu Simbel together into one and the Convention was adopted in November 1972. This is the Convention Concerning the Protection of the World Cultural and Natural Heritage (below cited as the WH Convention). The USA became the first member state of this Convention.

Japan has recently taken initiatives in order to adopt a Convention, as the USA did about 30 years ago. This is the new UNESCO Convention for the Safeguarding of the Intangible Cultural Heritage (below cited as the ICH Convention), which was adopted on October 17th 2003. Japan ratified it on June 15th 2004.

2. Background of the ICH Convention

If you would talk about the ICH in Europe or USA, most of people would ask you “what is it ?” If you mention the ICH in Japan, the reaction would probably be the same. However, if you say “Living National Treasure”, most of Japanese would know about it, while European or American would ask again

“what is it ?” “Living National Treasure” is not the notion used in the Law for the Protection of Cultural Properties in Japan. It has been created by mass media and has become very popular in Japan. Exactly speaking, the person who bears “highly sophisticated skill” in a traditional performing art, for example, can be designated as a so-called Living National Treasure, and his/her skill is intangible cultural heritage.

Some Noh performers for example have been designated as “bearer of important cultural properties”. Although Noh is popular today, it was in serious danger after the Meiji Restoration due to tendencies to praise Western culture in Japanese society. Similarly various traditional cultures in the world are in serious danger today due to the wake of globalization. UNESCO has concerned about such serious situations and published the Recommendation on the Safeguarding of Traditional Culture and Folklore in 1989. However this Recommendation focuses mainly on the methods for recording of folklore culture, and it was based on a nowadays outdated anthropological theory. This Recommendation was not successful from the view point of preservation of the ICH. UNESCO has launched also other programs related to the ICH such as “Living Human Treasure Program”, but these programs could not draw attention of many countries. The Proclamation of Masterpieces of the ICH, where Noh Theater and Bunraku Puppet Theater have recently been accepted, has not been so popular in many countries except Japan and some other countries. In short, only a small number of countries like Japan and Korea have been interested in the ICH.

On the other hand, the WH Convention was a big hit. The countries with WHs in their territories enjoy reputation and attract many tourists. Since the World Cultural Heritage premises basically an architectural culture, if other form of culture than architectural one flourished in a country, such as oral transmission of folktales, such country could not easily have even one WH despite its cultural richness. In fact, more than 50% of the WHs are located in Europe and North America. 90% of European countries have at least one WH, while 56% of countries in Asia and the Pacific have one WH. Although 40 countries in Africa except Arabic area have ratified the WH Convention, only 7% of the WHs are located in Africa.

3. Negotiation and Japan

Under such circumstances, UNESCO started to draft a Convention for the ICH in 2001. Originally a convention with a very similar structure to the WH

Convention was planned. A preliminary draft was prepared by a group of experts, including myself. The drafting work was smoothly done. But the intergovernmental sessions turned out to be extremely tough: at the first intergovernmental meeting, all European countries except the Netherlands expressly opposed the idea to make such a convention, thus the meeting has almost collapsed. At the second session, the adoption of only three provisions took one week despite lengthy debates. It was Japan that played the leading role throughout tough debates and negotiations during 4 intergovernmental sessions.

Why did Japan take such initiatives? Because it was Japanese Law that adopted the notion of the intangible cultural property as a legal notion for the first time in the world more than 50 years.

When the Law for Protection of Cultural Properties of 1950 was made, it mainly focused on traditional dance and music. Since at that time Japan was still occupied by SCAP (Supreme Commander of Allied Powers), all 5 preliminary drafts were submitted to SCAP to be commented by them. SCAP was of the opinion that due to difficult financial situations at that time, the preservation of the ICH would be too ambitious, so that the part on the ICH in the 1950 Law should be omitted. However the Japanese Government insisted on the original concept and could manage to add another category, i.e. craftsmanship.

The nature of the notion of intangible cultural property has changed through introducing the concept of “important” designated intangible cultural property in 1954. Through the introductions of “folklore intangible cultural property” and “selected preservation technique” (such as technique to make traditional music instruments), the notion of ICH in Japanese Law has been expanded. The notion of intangible cultural property has influenced some countries such as Korea, Philippines, Thailand and France. These countries are however still the minority.

4. The Structure of the ICH Convention

To understand the impact of the new Convention in Japan, one should understand the structure of the ICH Convention. There are 4 main points: (1) What is the ICH?, (2) How is it to be protected?, (3) What is the mechanism for safeguarding?, and (4) What are the financial resources?

(1) The first question related to the definition of the ICH. Art.2 of the ICH Convention defines the ICH as “the practices, representations, expressions, knowledge, skills - as well as the instruments, objects, artifacts and cultural spaces associated therewith - that communities, groups and , in some case, individuals recog-

nize as part of their cultural heritage.” It is a very abstract and broad definition and open-ended as para.2 states that the ICH “is manifested inter alia in the following domains: (a) oral traditions and expressions, including language as a vehicle of intangible cultural heritage; (b) performing arts; (c) social practices, rituals and festive events; (d) knowledge and practices concerning nature and the universe; (e) traditional craftsmanship”. This definition must be further elaborated by operational guidelines. Art.2 of the WH Convention, which clearly defines the Cultural Heritage, i.e. buildings, groups of buildings and sites, makes a sharp contrast.

(2) How to safeguard the ICH? Countries like Japan are very rare, which established the legal system to protect the ICH over 50 years ago. Most of countries in the world even did not think about what in their territories to be protected and safeguarded as the ICH. Therefore the part 3 of the ICH Convention is designed to give enough flexibility to each member state. Many member states should start from establishing their national inventories of the ICH in their territories. It is also expected that appropriate programs are made according to art.18.

(3) What is the mechanism of the Convention for safeguarding of the ICH? The ICH Convention set up two lists; the one is the Representative List of the ICH of Humanity (art.16), the other the List of ICH in Need of Urgent Safeguarding (art.17). At a glance, they look similar to the system of the WH Convention, i.e. the World Heritage List and the List of the WH in danger. But there is a difference between the two Conventions and this was actually one of the most difficult issues during the negotiations. I will discuss this later.

When 30 countries ratify the ICH Convention, the Convention will become effective. The General Assembly of the member states and the ICH Committee to be set up after the entry into force of the Convention will implement the Convention.

(4) How should the operation of the Convention be financed? The ICH Convention sets up the ICH Fund. It copied the structure of the WH Fund. Only difference is the amount of compulsory contribution of each member state. However, this was a very difficult issue throughout the negotiations.

5. Basic thoughts of the ICH Convention

What is the theoretical backbone of the above-mentioned structure of the ICH Convention? Correct understanding is very important to use this Convention especially in the framework of international assistance; in my view this Convention would be very useful for example for JICA to nurture human

resources in developing countries.

(1) *Elitism?*

This Convention has already been reported by some newspapers as an ICH version of the WH Convention. It is not accurate. The WH Convention adopted “outstanding universal value” as the criterion to include items into the WH List. One could describe it as the “elitism” of heritage. On the other hand, the ICH Convention para.2 of art.16 simply states the “Committee shall draw up and submit to the General Assembly for approval the criteria for the establishment, updating and publication of this Representative List.” The ICH Committee will not adopt the similar criterion to “outstanding universal value”, since the ICH Convention is based on the thought that all items of the ICH in the world should have the same value. Therefore the term the “World” ICH was not used in the text of the Convention. During the negotiations of the ICH Convention, criticism against the elitism of the WH Convention was so often raised that even the word “list” was hated by most of the delegations. At certain point, only three countries, i.e. Senegal, Japan and Turkey supported to use “list”, while all other delegations preferred “registry”.

And since the purpose of the Convention is to ensure the cultural diversity in the world, various kinds of ICH should be safeguarded under this Convention. Thus the definition of the ICH should be very broad. There was even a long list of items, including tattoo and cooking, to be safeguarded as an annex to the definition.

(2) *Community as bearer of the ICH*

It was very apparent during the negotiations that many delegations were interested in safeguarding of the ICH “transmitted through generations by various communities or groups”. Commercially successful performing art was never discussed, even if it is traditional one.

(3) *List of the ICH in Need of Urgent Safeguarding*

The reason why the ICH Convention uses “safeguarding”, not “protection” is to stress the urgent character of the Convention. In this sense, the List of the ICH in Need of Urgent Safeguarding should be the main player. The Representative List of the ICH was originally proposed as the list of “masterpieces” of the ICH, but due to strong opposition against the naming “masterpieces”, which reminds of the WH-List, the nature of the list was changed. The current Representative List

of the ICH has the function to show international community concrete examples of the ICH for the purpose of awareness-raising. Because, as I stated above, most of people/countries do not know what the ICH is.

6. The ICH Convention and Japan in future

How should we understand the relationship between the Convention and the current system in Japan? In my views, there is no apparent conflict between these. However I see some possible frictions, especially friction of the basic thoughts in the Convention and the Law for Protection of Cultural Properties.

(1) *High value*

First of all, under the Law for Protection of Cultural Properties, there are 3 categories, which could be treated as the ICH in this Convention: intangible cultural property, folklore intangible cultural property, and selected preservation technique. Among these three, intangible cultural property has been the main category. The Law for the Protection of Cultural Properties of 1950 had requested that items should have “high value” to be protected. This criterion applies until today. Here one can see a kind of elitism.

(2) *Importance*

In addition to that, according to the Law of 1950, only intangible cultural property “in danger of deterioration” was to be protected. But in 1954, the requirement of “in danger of deterioration” was taken, and “important” was inserted instead. This is the system, under which even commercially successful items could be protected as long as it has high value and be important. Here one can see the difference of basic principles of the ICH Convention and the Japanese Law. Since, as I mentioned, the Convention does not adopt the elitism.

(3) *The Relationship to “Proclamation of Masterpieces of Intangible Cultural Heritages”*

The above mentioned “Proclamation of Masterpieces of Intangible Cultural Heritages” is integrated into the scheme of the Intangible Heritage Convention through art.31. The items selected in the “Proclamation of Masterpieces of Intangible Cultural Heritages” will be automatically included in the Representative List of Intangible Cultural Heritage in the Convention. Noh and Bunraku, which were selected, will be listed up. What should Japan recommend at the third

“Proclamation of Masterpieces of Intangible Cultural Heritages” in 2005? Taking strong opposition during the negotiation, Japan should not recommend items, which are commercially successful, but such items that reflect the cultural diversity of Japanese traditional culture.

This suggests us a unique position of Japan: Japan developed various forms of very sophisticated traditional cultures. Besides such traditional high cultures, Japan could also maintain many folklore intangible cultural properties. However, in many countries the ICH usually means only the latter. Therefore as the scope of the Convention the folklore ICH was stressed during the negotiations. When the Convention enters into force in near future, Japan should care in order to take a better balance between high culture and folklore culture to satisfy the aims of both the Convention and the Law for Protection of Cultural Properties. If only “important cultural properties” as high culture would be recommended to include the Representative List under the Convention, such attitude would mean that Japan disregards the purpose to protect the folklore ICH. To implement the Convention in appropriate manner, after Japan ratified it, attention should equally be paid to both high culture and folklore intangible cultural property.

(4) “Space” as intangible cultural heritage

The Intangible Heritage Convention recognized “cultural space” as a type of intangible cultural heritage. Here we see also the relationship between the new convention and the World Heritage Convention, since, under the World Heritage Convention, many items have been recommended as “cultural landscape”, which covers also intangible aspects of heritages. It should be Japan’s role to clarify this relationship. In addition to that, Japan should make clear the relationship between these concepts in these international legal instruments and the “Meisho” concept in the Law for Protection of Cultural Property.

7. Summary

I discussed the basic principles and structure of the new ICH Convention, comparing with Japanese system. Not only the ICH per se, but also how to preserve “spaces” where the ICH should take place is significant. Because the ICH Convention adopted the notion “cultural space”. I look forward to learning a lot from experts from various countries.